

Regional Technical Coordinator  
Midwest Region

Assistant Chief Counsel (Income Tax & Accounting)  
National Office TCR 17,891

Technical Coordination Report Submitted By:  
Mr. George Hertz  
Des Moines District

Recommending: Amendment of section 6503 of the Internal Revenue Code to suspend the running of the statutory period of limitations on assessment and collection while a taxpayer is a "fugitive from justice" or is incarcerated.

Mr. Hertz has recommended that the statutory period of limitations on assessment and collection should be extended for the period of time a taxpayer is a "fugitive from justice." This would require amending section 6503 and possibly section 6501 of the Code. We believe the existing provisions are adequate. In addition, National Office Collection and National Office Examination have concurred in informal discussions with this office that the existing provisions are adequate.

#### Collection statute

We believe that the majority of "fugitives" who owe delinquent taxes avoid criminal prosecution by leaving the United States, and are, therefore, subject to the provisions of section 6503(c) of the Code. Section 6503(c) extends the statutory period of limitations on collection for as long as the taxpayer is outside the United States provided the absence is for a continuous period of at least 6 months. As Mr. Hertz noted, this provision is not without some administrative limitations on its utility because it is sometimes difficult to determine when a taxpayer returns to the United States. However, we note that Internal Revenue Manual section 5186.7 provides that certain fugitives owing federal taxes may be entered into the Treasury Enforcement Communication System. This is a computerized interagency communication system through which fugitives may be located and the IRS notified of a taxpayer's return to the United

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States. Use of this system should be considered when dealing with taxpayers who have left the United States.

We also note that Congress was not unaware of these administrative difficulties when it enacted the current section 6503(c) of the Code in the Federal Tax Lien Act of 1966. The former section 6503(c) provided that the running of the statutory period of limitations was suspended where the collection of tax was hindered or delayed because a taxpayer's property was located outside the United States. The legislative history to the 1966 amendments states that there were administrative problems of knowing when a taxpayer's property was located outside of the United States and for how long. Congress believed that suspension of the running of the period of limitations during a taxpayer's absence from the United States (rather than the property's absence) would remove these administrative problems. See H.R. Rep. No. 1884, 89th Cong., 2d Sess. 23 (1966); S. Rep. No. 1708, 89th Cong., 2d Sess. 25 (1966).

Mr. Hertz has also suggested that section 6503 of the Code be amended to provide for extension of the statutory period of limitations on collection if the taxpayer is incarcerated. We do not think that the Service needs to treat taxpayers in prison differently than other taxpayers who are unable to pay. Although a taxpayer's ability to earn income is certainly limited while in prison, some taxpayers may, nevertheless, have assets that can be reached to satisfy their tax liability.

In addition, we note that Congress recently amended section 6502(a) of the Code to extend the statutory period for collection from 6 years to 10 years. This extension of the collection period should greatly enhance the ability of the Service to collect from both fugitives and prisoners.

#### Assessment statute

Although it is certainly desirable to be able to communicate with a taxpayer when proposing a deficiency, we believe the ability under section 6212(b) of the Code to legally assess a deficiency after mailing the statutory notice to the taxpayer's last known address greatly alleviates the type of period of limitations problems encountered when trying to collect the tax from a fugitive. It is clear that Congress enacted the last known address "safe harbor" with this type of situation in mind. See, for example, the discussion of section 6212(b) in Mulvania v. Commissioner, 81 T.C. 65, 68 (1983) and Frieling v. Commissioner, 81 T. C. 42, 52 (1983). We also believe that the ability to assert a deficiency when a taxpayer is in prison does not appear to present any unusual problems with respect to the statutory period of limitations on assessment because the taxpayer's location is determinable.

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We appreciate Mr. Hertz's interest and initiative in submitting his report and hope that he will continue to provide us with his ideas. Copies of this memorandum are attached for the District Technical Coordinator, Mr. Hertz, and other interested persons.

Assistant Chief Counsel (Income Tax &  
Accounting)

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Attachments: 4